IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 13601 of 2004

Between:

1.Sri Subash Kapoor, S/o Late Bankat Prasad,
R/o H.No. 14-11-1060, Godeki Khabhar, Nayabasti, Hyderabad.
2.Sudershan Raj, S/o Late Bankat Prasad,
R/o H.No. 14-11-1060, Godeki Khabhar, Nayabasti, Hyderabad.

..... PETITIONERS

AND

1 The Commissioner of Endowments, Endowments Department, Hyderabad.
2 The Deputy Commissioner of Endowments, Endowments Department, Hyderabad.
3 The Assistant Commissioner of Endowments, Endowments Department, Hyderabad.
4 The Single Trustee, Sri Mahadevji (Shiva) Temple, Beerbanbagh, Shahinayatgunj, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari to call for the records in I.A.NO. 99/2003 in O.A.No.16/2003 and quash the same as illegal, arbitrary, unconstitutional and without jurisdiction

Counsel for the Petitioners: MR.T.SRIKANTH REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR ENDOWMENTS

Counsel for the Respondent No.4: --

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a writ of Certiorari to call for the records in I.A.No.99 of 2003 in O.A.No.16 of 2003 on the file of the Deputy Commissioner, Endowments, Hyderabad, and quash the same being arbitrary and illegal.

O.A.No.16 of 2003 has been filed by the Single Trustee of Sri Mahadevji Shiva Temple, Beerbanbagh, Shaw-inayat-Gunj, Hyderabad, fourth respondent herein, under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') seeking eviction of the petitioners herein from the premises bearing No.14-11-1060 admeasuring 700 square yards, belonging to Mahadevji Shiva Temple. The petitioners herein filed a detailed counter affidavit in O.A.No.16 of 2003 stating that they are the absolute owners of the property in question by virtue of a preliminary decree passed in O.S.No.1227 of 1981 on the file of the Court of V-Additional Judge, City Civil Court, Hyderabad. It was further stated that the Commissioner of Endowments was a party to the said suit and that as per the said decree it was declared that the said property does not belong to the Endowment. Further, one Sri Vijay Kumar Masharkar, an alleged tenant of the petitioners, filed O.A.No.80 of 2002 seeking a declaration that the property in question belongs to the temple and the said proceedings are pending before the Deputy Commissioner of Endowments in which the temple has not filed any counter so far. Thus, it was contended that the proceedings initiated under Section 83 of the Act are not maintainable and that since the property is a private property the proceedings initiated for eviction under Section 83 of the Act are without jurisdiction and liable to be dismissed in limini.

The petitioners also filed an application under Section 151 CPC seeking to dismiss the O.A.No.16 of 2003 as not maintainable being one without jurisdiction. The said application was numbered as I.A.No.99 of 2003 and the Deputy Commissioner of Endowments, Hyderabad, second respondent herein, after hearing both sides, dismissed the same by order dated 17.07.2004 which is under challenge in this writ petition.

I have heard the learned counsel for the petitioners and the learned Government Pleader appearing for respondents 1 to 3.

Sri K.Pratap Reddy, the learned Senior Counsel appearing for the petitioners contended that by virtue of the Decree in O.S.No.1227 of 1981, which has become final, the issue with regard to the title in respect of the land in question has attained finality and therefore the respondents have no authority to reagitate the matter and thus the eviction proceedings initiated under Section 83 of the Act claiming that it is the Endowment property and alleging that the petitioners are encroachers are not maintainable. He further contended that the action of the respondents in purporting to proceed against the petitioners under Section 83 of the Act amounts to the arbitrary exercise of power and therefore the second respondent ought to have allowed I.A.No.99 of 2003 thereby dismissing O.A.No.16 of 2003 as not maintainable. According to the learned Counsel, the impugned order dated 17-07-2004 dismissing I.A.No.99 of 2003 merely observing that all the issues raised in the application are required to be resolved only after conducting the trial is not sustainable and liable to be quashed.

A perusal of the impugned order dated 17-07-2004 shows that the 2nd respondent having considered the rival contentions raised by the parties and on appreciation of the material on record dismissed I.A.No.99 of 2003 observing that how the petitioner succeeded to the property of Smt. Gulab Bibi (the 1st defendant in O.S.No.1227/1981) who was issueless and Smt. Gulab Bibi being described merely as a Muhawally in the Munthakhab, can the endowed property be

devolved upon the petitioner and what would be the consequences of the several civil litigations initiated by the petitioner and in the absence of a final decree, whether the preliminary decree operates against the temple are all the issues that are to be resolved only after conducting trial. Accordingly, the main O.A.No.16 of 2003 was posted to 04-08-2004 for enquiry.

It is relevant to note that under Section 83(2) of the Act, where, on a perusal of the report of the Assistant Commissioner of Endowments received under Sub Section (1), the Deputy Commissioner finds that there is a *prima facie* case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and may proceed with the enquiry and pass order requiring the encroacher to remove the encroachment and deliver possession of the land or building encroached upon to the trustee. Thus, it is clear that for initiating the proceedings under Section 83 of the Act, a prima facie satisfaction of the Deputy Commissioner of Endowments as to the alleged encroachment is sufficient. In the light of the material on record, it cannot be said that no such prima facie case was made out for initiating the proceedings under Section 83 of the Act. Of course, it is always open to the petitioners to establish their claim that they are the absolute owners of the property in question and that the same does not belong to the Endowment, by producing the necessary evidence including the preliminary decree in O.S.No.1227 of 1981.

It is not the case of the petitioners that the proceedings under Section 83 of the Act are not maintainable on the ground of patent lack of jurisdiction. Their objection that the proceedings are without jurisdiction on the ground that the property in question does not belong to the Endowment being a mixed question of fact and law which depends upon proof of facts, the second respondent has rightly observed that the issue requires to be resolved only after conducting trial and there is no justifiable reason to dismiss the eviction proceedings straightaway.

It is also to be noted that Sub-Section (3) of Section 84 of the Act, which provides for mode of eviction on failure of removal of the encroachments as directed by the Deputy Commissioner of Endowments under Section 83 of the Act mandates that no injunction shall be granted by any Court in respect of any proceedings taken or about to be taken by the Deputy Commissioner under Section 83 of the Act.

In the light of the said statutory provisions, I do not find any infirmity in the order of the Deputy Commissioner of Endowments in having rejected the application of the petitioners to dismiss the eviction petition filed under Section 83 of the Act at the threshold as not maintainable.

For the aforesaid reasons, no case is made out to issue a Writ of Certiorari as prayed for. It is open to the second respondent to proceed with further enquiry in O.A.No.16 of 2003 without having regard to anyone of the findings or observations made under the impugned order or by this Court in this order and to pass appropriate orders in accordance with law after affording due opportunity to both the parties to substantiate their respective claims.

The writ petition is accordingly disposed of. No costs.

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04.08.2004

VGB

To

1 The Commissioner of Endowments, Endowments Department, Hyderabad.
2 The Deputy Commissioner of Endowments, Endowments Department, Hyderabad.
3 The Assistant Commissioner of Endowments, Endowments Department, Hyderabad.
4 The Single Trustee, Sri Mahadevji (Shiva) Temple, Beerbanbagh, Shahinayatgunj, Hyderabad.

5 2CCs to the Government Pleader for Endowments, High Court Buildings, Hyderabad (OUT)

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